

BEFORE THE DIVISION OF OIL, GAS AND MINING  
DEPARTMENT OF NATURAL RESOURCES  
IN AND FOR THE STATE OF UTAH

**FILED**

**JAN 09 2002**

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SECRETARY, BOARD OF  
OIL, GAS & MINING

IN THE MATTER OF THE PETITION : REQUEST FOR AGENCY ACTION  
FILED BY THE DIVISION OF OIL, GAS  
AND MINING FOR AN ORDER TO POST :  
SUPPLEMENTAL RECLAMATION : DOCKET NO. 2002-004  
SURETY, OR REQUIRE IMMEDIATE : NO. M/045/022  
RECLAMATION, MAGNESIUM  
CORPORATION OF AMERICA, :  
KNOLLS SOLAR PONDS PROJECT,  
TOOELE COUNTY, UTAH :

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**RELIEF SOUGHT**

The Division of Oil, Gas and Mining ("Division"), hereby petitions the Board of Oil, Gas and Mining ("Board"), for an Order to post additional reclamation surety for the Knolls Solar Ponds Project, located in portions of the following lands: T1N, R12W, Sections 4 – 9, 17 – 21, 28 – 31, 33; T1S, R12W, Sections 4 – 9, 17 and 18; T1N, R13W, Sections 1, 3 – 15, 17 – 31, 33 – 35; T1S, R13W, Sections 1, 3 – 12, 13 – 15, 17 – 18; T1N, R14W, Sections 1, 3, 4, 9 – 15, 23 – 26; T1S, R14W, Section 1; and T2N, R13W, Sections 6, 7, 15, 19, 30, 31, SLBM, Tooele County, Utah; and a directive to commence immediate reclamation of all pertinent lands as required under the approved permit if the bond is not posted, and to revoke the Large Mine permit approval should the bond not be posted. The mine operator is Magnesium Corporation of America ("Magcorp").

**JURISDICTION**

1. This action is brought by the Division pursuant to Utah Code Annotated §40-8-7 (1953, as amended).
2. Jurisdiction over this matter is conferred upon the Board of Oil, Gas and Mining ("Board") by Utah Code Annotated §40-8-6 (1953, as amended).
3. Withdrawal of permit approval is pursuant to Utah Code Annotated §40-8-16.2(b).  
*Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.*

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### NOTICE REQUIREMENTS

4. Pursuant to Sections 63-46b-6 to 63-46b-11 of Utah Code Annotated (1953, as amended), the hearing will be conducted formally.
5. The hearing will be held on February 27, 2002 at 10:00 a.m. Any party who fails to appear at said hearing may be held in default.
6. The names and addresses of all persons to whom Request for Agency Action shall be given are attached as EXHIBIT "1" and by this reference incorporated herein. All other exhibits will be provided at a later date.

### STATEMENT OF THE FACTS

1. On January 25, 2001, the Division notified Magcorp that the reclamation plan and bond amount for the Knolls Solar Pond Project was outdated and needed to be revised. A detailed reclamation surety bond estimate was enclosed. Magcorp was asked to provide the Division with a \$6,051,640.00 reclamation surety within 90 days, a replacement Reclamation Contract, and appropriate updates and revisions to the mining and reclamation plan to coincide with the revised reclamation cost estimate and on-the-ground conditions. The \$6 million estimate was prepared by BLM at the request of OGM. (EXHIBIT A)
2. On February 7, 2001, Magcorp representatives met with Division staff to discuss their preliminary objections and concerns regarding the latest reclamation surety estimate. Magcorp proposed some itemized alternative reclamation costs, but did not commit to posting any additional bond amount at that time. An additional 90-days from the meeting to prepare a formal response to the Division's January 25<sup>th</sup> letter (until May 9, 2001) was requested by Magcorp and granted by the Division at the conclusion of the meeting. (EXHIBIT B)
3. On May 11, 2001, the Division received a formal response from Magcorp to the January 25<sup>th</sup> request. Magcorp expressed their formal comments to the inaccuracies contained within the \$6 million reclamation cost estimate. (EXHIBIT C)
4. On July 9, 2001, Division staff met with Magcorp representative to discuss and present a revised surety bond estimate. A revised \$4,039,100 estimate was hand delivered to Magcorp representatives for their consideration. On July 13, 2001, the Division sent a follow up letter with documented meeting minutes to Magcorp with a response deadline of July 25, 2001. (EXHIBIT D)
5. On July 25, 2001, Magcorp provided a formal response to the Division's July 13, 2001 letter. Magcorp objected to and requested confirmation of the legal authority giving the State the right to unilaterally change the scope of the approved reclamation plan and to increase the amount of surety bond. Magcorp also requested the Division perform an



independent line by line review of the \$6 million cost estimate and compare it against Magcorp's written technical evaluation of \$1,196,414. (EXHIBIT E)

6. On September 13, 2001, Kurt Seel, Assistant Attorney General, provided a written response to Magcorp's July 25, 2001 letter citing the reasons why the Division was authorized to periodically evaluate the approved mine plan and reclamation cost estimate and to require changes to both if deemed appropriate. (EXHIBIT F)
7. On November 8, 2001, the Division sent a second request to Magcorp directing the operator to post an increase in the reclamation surety. The letter contained a new \$2,147,000 reclamation cost estimate prepared by Division staff. Magcorp was directed to post the replacement surety within 30 days of receipt or file a formal appeal to the Division Director or Board of Oil, Gas and Mining within that timeframe. (EXHIBIT G)
8. On December 4, 2001, Magcorp hand delivered a response to the Division's November 8, 2001, surety bond request. Magcorp requested a 60-day time extension to continue to discuss the surety bond and reclamation plan changes with the Division, the BLM and Magcorp's bankruptcy counsel. (EXHIBIT H)

#### COUNT 1

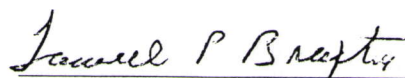
9. The Division incorporates by reference paragraphs 1 through 8 as stated above.

#### PRAYER FOR RELIEF

WHEREFORE, the Division requests that the Board enter the following Order(s):

- A. An Order directing Magcorp to post adequate surety to reclaim the mine site, as determined by the Division, or to commence immediate reclamation of the Knolls Solar Pond Project site in conformance with the Utah Mined Land Reclamation Act and the approved reclamation plan.
- B. An Order to Revoke Magcorp's large mining permit approval for the Knolls Solar Pond Project, file number M/045/022, should the operator fail or refuse to provide and maintain adequate surety to reclaim the mine site.

Dated this 9<sup>th</sup> day of January, 2002.



Lowell P. Braxton, Director  
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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing Request for Agency Action, for Magnesium Corporation of America, Knolls Solar Ponds Project, M/045/022, to be mailed by first class mail, postage prepaid, the 9<sup>th</sup> day of January, 2002 to:

CERTIFIED RETURN RECEIPT

7099 3400 0016 8896 4226


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